Lim Kee Fung v Kwong Wah Yit Poh Press Bhd (Yeoh Seok Khoy, third party)

HIGH COURT (ALOR SETAR) — CIVIL SUIT NO 22–14 OF 2007
SEE MEE CHUN JC
29 APRIL 2012

Tort — Defamation — Libel — Advertisement in newspaper had plaintiff's photograph with request to anyone knowing of his whereabouts to contact phone number for reward — Whether words in advertisement in their natural ordinary meaning imputed anything dishonourable/discreditable to plaintiff — Whether words meant what they said ie that someone was trying to locate plaintiff — Whether publishers of newspaper negligent — Whether plaintiff's claim he suffered anxiety disorder due to advertisement proven

At the request of the third party ('Yeoh') in the instant action, an advertisement was published in a Chinese language newspaper by the defendant which bore a colour photograph of the plaintiff with a caption stating his name and NRIC number and a request to anyone knowing of his whereabouts to contact a telephone number in return for a reward for such information. Yeoh had actually taken out the advertisement because he alleged the plaintiff owed him money and his efforts to contact the plaintiff were unsuccessful. He said he resorted to taking out the advertisement as he had commonly seen such advertisements in Chinese language newspapers to locate people. The photograph of the plaintiff was reused by the defendant from a news article it published three months earlier about a fire which destroyed the plaintiff's company premises causing him substantial loss. The plaintiff brought the instant action claiming the advertisement had defamed him in that it suggested he was a cheat or conman, that he had committed a serious offence and was in hiding or was involved in illegal transactions and that he was not fit to hold any position in society or to be a director or head of a company. The plaintiff claimed he was a shareholder and managing director of a company; a prominent member of the Chinese community in Sungei Petani and a donor to many charitable bodies. The advertisement, he said, had damaged his character, credibility and reputation because of public scandal and ridicule and he suffered anxiety disorder as a result. The plaintiff called a consultant psychiatrist ('PW2'), whom he had been seeking treatment from, during the trial to back his claims.

Held, dismissing the claim and the claim against the third party with costs:

(1) The standard to be adopted when determining whether there had been

defamation was that 'of ordinary reasonable people, of fair average intelligence, who are not avid for scandal and should not be unduly suspicious'. Applying this standard, the words in the advertisement were neutral and meant exactly what was stated there, which was to locate someone (see paras 17–18).

(2) There was nothing in the advertisement which suggested the plaintiff to be a cheat or conman or that he was implicated in any illegal activities such as Ah Long or that he was unfit to hold any position in society or to be a managing director of a company. The offer of reward was as stated therein to be a token of appreciation and consistent with Yeoh's evidence of what it was intended to be. It did not connote the plaintiff was hiding from his creditors such that a reward was offered for information on his whereabouts (see para 18).

(3) From the evidence, DW1 (the defendant's employee) drafted the contents of the advertisement based on Yeoh's instructions which was to locate someone. As far as the contents were concerned they were true in that Yeoh wanted to locate the plaintiff. DW1 was told the plaintiff was a customer who owed money. This being a social service provided by *Kwong Wah* and common in the Chinese press to place advertisements to locate a person, it was sufficient for DW1 to ensure the contents were true by making sure the wording did not affect the person concerned. The evidence of the defendant being paid RM3,000 for the advertisement without more did not make it negligence (see para 25).

(4) The court could not rely on the psychiatrist's report prepared by PW2 as indicating the plaintiff had anxiety disorder brought about by the advertisement. PW2 had testified it was possible the heavy loss from the fire which destroyed the plaintiff's company premises could have caused the anxiety disorder. PW2 first saw the plaintiff five years after the advertisement and he agreed there could have been intervening factors which may have caused the anxiety disorder. Much of PW2's report was based on what the plaintiff told him — and he would not know if the plaintiff had lied to him — and what the plaintiff's first doctor (Dr Lim), who was not called to testify, had noted down (see para 28).

[Bahasa Malaysia summary

Atas permintaan pihak ketiga ('Yeoh') dalam tindakan ini, suatu iklan telah diterbitkan di dalam akhbar Bahasa Cina oleh defendan yang menunjukkan gambar berwarna plaintif dengan tajuk yang menyatakan namanya dan no Kad Pengenalan dan permintaan bagi sesiapa yang tahu di mana dia berada untuk menghubungi nombor telefon dan akan diberikan ganjaran untuk informasi tersebut. Yeoh sebenarnya telah menarik balik iklan tersebut kerana dia mendakwa plaintif berhutang wang dengannya dan usahanya untuk menghubungi plaintif gagal. Dia berkata dia telah menarik balik iklan tersebut

memandangkan dia biasa melihat iklan sedemikian dalam Bahasa Cina untuk mencari orang. Gambar plaintif telah digunakan semula oleh defendan daripada artikel akhbar yang diterbitkan tiga bulan sebelumnya tentang kebakaran yang telah memusnahkan premis syarikat plaintif yang menyebabkan kerugian substantialnya. Plaintif telah membawa tindakan ini dengan mendakwa bahawa iklan tersebut telah memfitnahnya dengan memberi anggapan bahawa dia seorang penipu atau penjenayah, bahawa dia telah melakukan jenayah yang serius dan sedang bersembunyi atau telah terlibat dengan transaksi tidak sah dan bahawa dia tidak berhak memegang sebarang jawatan dalam masyarakat atau menjadi pengarah atau ketua sebuah syarikat. Plaintif mendakwa bahawa dia adalah pemegang saham dan pengarah urusan sebuah syarikat; ahli masyarakat Cina yang prominen dan penderma kepada banyak badan-badan kebajikan. Dia berkata iklan tersebut telah merosakkan karakternya, kredibilitinya dan reputasinya kerana skandal dan cacian awam dan dia telah mengalami penyakit kegelisahan kerana perkara tersebut. Plaintif telah memanggil penasihat psikiatri ('PW2'), yang mana dia telah mendapatkan rawatan semasa perbicaraan untuk menyokong tuntutannya.

Diputuskan, menolak tuntutan dan tuntutan terhadap pihak ketiga dengan kos:

(1) Standard yang diguna pakai semasa menentukan sama ada terdapat fitnah 'of ordinary reasonable people, of fair average intelligence, who are not avid for scandal and should not be unduly suspicious'. Dengan mengguna pakai standard tersebut, perkataan-perkataan dalam iklan tersebut adalah neutral dan memberi maksud sebenar apa yang dinyatakan di situ, iaitu untuk mencari seseorang (lihat perenggan 17–18).

(2) Tidak terdapat iklan yang memberikan tanggapan bahawa plaintif adalah seorang penipu atau penjenayah atau bahawa dia telah melakukan sebarang aktiviti tidak sah seperti Ah Long atau bahawa dia tidak boleh memegang sebarang jawatan dalam masyarakat atau pengarah urusan sebuah syarikat. Tawaran untuk ganjaran yang dinyatakan adalah token penghargaan dan konsisten dengan keterangan Yeoh tentang apa yang ingin dimaksudkan. Ia tidak memberikan maksud bahawa plaintif sedang bersembunyi daripada pemiutang-pemiutangnya dan disebabkan itu ganjaran telah ditawarkan untuk informasi tentang di mana dia berada (lihat perenggan 18).

(3) Daripada keterangan, DW1 (pekerja defendan) telah mendrafkan kandungan iklan berdasarkan arahan Yeoh untuk mencari seseorang. Berhubung dengan kandungan tersebut ia adalah benar bahawa Yeoh ingin mencari plaintif. DW1 telah memberitahu bahawa plaintif adalah pelanggan yang berhutang wang dengannya. Melihatkan bahawa ia

adalah perkhidmatan sosial yang diberikan oleh *Kwong Wah* dan suatu kebiasaan dalam akhbar Cina untuk membuat iklan untuk mencari seseorang, adalah mencukupi bagi DW1 untuk memastikan kandungannya adalah benar dengan memastikan perkataan tersebut tidak memberi kesan kepada orang yang berkenaan. Keterangan defendan bahawa dia telah dibayar RM3,000 untuk iklan tidak membuatkannya kecuaian (lihat perenggan 25).

(4) Mahkamah tidak boleh bergantung kepada laporan pakar psikiatri yang disediakan oleh PW2 yang menunjukkan plaintif mempunyai penyakit kegelisahan disebabkan iklan tersebut. PW2 telah memberikan kenyataan bahawa adalah mungkin kerugian besar akibat daripada kebakaran yang telah memusnahkan premis syarikat plaintif boleh menyebabkan penyakit kegelisahan tersebut. PW2 mula berjumpa dengan plaintif lima tahun selepas iklan tersebut dan bersetuju terdapat faktor-faktor campur tangan yang mungkin boleh menyebabkan penyakit kegelisahan tersebut. Banyak daripada laporan PW2 datang daripada apa yang diberitahu oleh plaintif — dan dia tidak akan tahu sekiranya plaintif telah menipunya — dan apa yang telah ditulis oleh doktor pertama plaintif (Dr Lim), yang mana tidak dipanggil untuk memberikan kenyataan (lihat perenggan 28).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 484–645.

Cases referred to

Chok Foo Choo @ Chok Kee Lian v The China Press [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (refd)

Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor [2010] 2 MLJ 492, HC (refd)

Bhag Singh (KC Rama with him) (K Thanges & Associates) for the plaintiff.
Ching Sen Mei (Toh Lee Hong with her) (Kek Ooi & Lee Hong) for the defendant.
Suppiah Arumugam (Presgrave & Matthews) for third party.

See Mee Chun JC:

[1] The plaintiff is suing the defendant in respect of an advertisement published in Kwong Wah Yit Poh ('Kwong Wah') on 3rd, 4th, 5th and 6th February 2005 ('advertisement'). *Kwong Wah* is a Chinese language newspaper published and printed by the defendant. The defendant has brought in a third party ('Yeoh') as it says the advertisement was published at the request of Yeoh who had signed a letter of indemnity. The advertisement can be found in bundle C, tab 2 pp 1–8. Inserted in the advertisement is a colour photograph of the plaintiff followed by the words as translated:

NOTIS MENCARI ORANG

LIM KEE FUNG

KP: 611102–07–5277

Jika anda menemui atau dapat menjejak orang ini

Duit kopi akan diberikan.

Sebarang berita sila hubungi: 016–903 2527.

[2] The plaintiff says the advertisement is defamatory as the words in their context refers to him as a cheat or conman and that he was involved in illegal transactions (para 5(a) and (b) of statement of claim). Further or in the alternative the words in their natural and ordinary meaning were understood to mean or by innuendo that the plaintiff was a cheat or a conman; participated or was involved in illegal transactions; committed a serious offence, in hiding with a reward offered for information; unfit to hold any position in society or to be director or managing director of any company (para 6(i)–(v) of statement of claim). The character, credibility and reputation of the plaintiff has suffered by reason of public scandal and ridicule. The plaintiff was also put through pain, suffering and mental agony and was treated for 'anxiety disorder with prominent somatic symptoms'. The defendant is further alleged to have been reckless and or negligent in the printing and publication of the advertisement and the particulars are set out in para 3C of statement of claim. The plaintiff states he is a shareholder and managing director of Hong Technical Engineering Sdn Bhd (the company) and a prominent member of the local Chinese community who has given donations to charitable organisations. The damages claimed are general (for libel and malicious falsehood) and in the alternative damages for negligence and nuisance, aggravated and exemplary.

[3] The translation of the advertisement was prepared by PW4. In cross-examination by the defendant's counsel, he was referred to bundle C, 287 which is another translation of the advertisement prepared by the defendant which reads:

ORANG YANG HILANG

Lim Kee Fung 611102–07–5277

Jika anda temui atau jumpa orang ini,

Sila hubungi

016–903 2527

Pembayaran akan dibuat sebagai tanda penghargaan.

[4] PW4 agreed the defendant's translation was acceptable and confirmed

the words *pembayaran akan dibuat sebagai tanda penghargaan* were also acceptable. Those words were more formal while the words *duit kopi* were colloquial. To a question by third party's counsel PW4 said the word *menjejak* means locate or *mencari*. From the evidence of PW4 both translations are acceptable and it was an agreed fact the advertisement was *satu notis untuk mencari orang.* It is therefore taken the advertisement was a notice to locate someone and a reward would be offered for information towards this end.

WHETHER THE ADVERTISEMENT IS DEFAMATORY

[5] It is well settled law that in order to prove a claim on defamation three elements must be established — (1) the statement must be defamatory, (2) the statement must refer to the plaintiff and (3) the statement must be published by the defendant to a third party. The advertisement with the name of the plaintiff and his colour photograph obviously referred to the plaintiff and there was publication when the advertisement appeared on four consecutive days, from 3–6 February 2005 in *Kwong Wah*. That leaves the first element of whether the advertisement is defamatory.

[6] The leading textbook on defamation *Gatley on Libel and Slander* (9th Ed) 1998 states at p 7:

> What is defamatory. There is no wholly satisfactory definition of a defamatory imputation. Three formulae have been particularly influential: (1) Would the imputation tend to 'lower the plaintiff in the estimation of right-thinking members of society generally'?; (2) Would the imputation tend to cause others to shun or avoid the plaintiff?; and (3) Would the words tend to expose the plaintiff to 'hatred, contempt or ridicule'?.

[7] In *Chok Foo Choo @ Chok Kee Lian v The China Press* [1999] 1 MLJ 371; [1999] 1 CLJ 461 it was said at p 374 (MLJ); p 467 (CLJ):

> … the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question, invites an affirmative response, then the words complained of are defamatory.

[8] The plaintiff gave evidence as PW1 and his witness statement is marked P1. It was his evidence the advertisement with his colour photograph portrayed him to be involved in a serious offence and in hiding; a cheat — involved in illegal transactions; and not qualified to hold any position in any association or to be a managing director. The plaintiff's other witnesses PW3 (Lim Sok Har, the plaintiff's elder sister), PW5 (Lean Chun Woei, businessman), PW6 (Chew Ba Chuan, worker in Por Mui Thian temple) and PW7 (Yap Mei Yin, the plaintiff's wife) all testified along the same lines the advertisement had

portrayed the plaintiff as having those attributes as described earlier and that was why people were looking for the plaintiff. All believed that of him. PW5 also said he believed the plaintiff had cheated, committed breach of trust or was involved in Ah Long activities (money lending). The plaintiff and the other witnesses agreed the words conman, cheat and the other attributes which the plaintiff said were ascribed to him were not specified in the advertisement. The plaintiff said although the advertisement did not contain those words he felt that was what it conveyed.

[9] When the advertisement first appeared the plaintiff was in Kuala Lumpur and PW5 and PW6 had telephoned him asking about it. He was embarrassed and afraid and stayed on in Kuala Lumpur for about two years. PW5 and PW6 advised him to stay in Kuala Lumpur and not return to Sungai Petani. The plaintiff returned to Sungai Petani around July/August 2007. From 2005–2007 he went back to Sungai Petani once a month. PW6 testified the plaintiff who was the secretary of the temple did not go there for two years from February 2005 and that the plaintiff is still the secretary. The plaintiff and PW7 testified after the fire to the company premises on 8 October 2004 the business continued to operate next door.

[10] The plaintiff and PW7 were afraid to call the phone number in the advertisement. According to the plaintiff PW5 called the number and a woman answered and said she did not know who was looking for the plaintiff or about the publication. PW5 said he called the number on his own volition after he had spoken to the plaintiff regarding the advertisement and he didn't inform the plaintiff about it

[11] DW1 (Teoh Hang Chong) was the branch manager of the defendant and in charge of news and current affairs and advertisements for the Balik Pulau and Bayan Baru region at the relevant time. His witness statement is marked as D17. He drafted the contents using the particulars given by Yeoh. The colour photograph was from a news article in Kwong Wah regarding a fire in plaintiff's company premises. According to him the words are neutral and is a standard format and it's what is used when someone wants to get in touch with a person. The circumstances when someone places such an advertisement is to look for friends or relatives whom they have lost touch or contact with. He does not know the plaintiff and the advertisement was based solely on Yeoh's instructions. The advertisement is not defamatory of the plaintiff and is a simple advertisement looking for someone. There is no innuendo or implied meaning drawn. It is common in newspapers for advertisements to be placed to locate missing, persons. In cross-examination by the plaintiff's counsel he said 'common' was in relation to Chinese newspapers.

[12] Yeoh gave evidence as DW2 and his witness statement is marked as D18. He said he was unable to contact the plaintiff and wished to publish an advertisement to locate him. This was because he had seen such advertisements published to locate people. The reward was to thank the person for assistance and to reimburse for the expenses incurred such as making phone calls and transport.

[13] The plaintiff and PW7 said they had not seen such advertisements. PW3 said advertisements can be placed to locate someone. PW4 had come across such advertisements when someone cannot be located and it is common to place advertisements to locate them. PW5 and PW6 have also come across such advertisements. It would be in the plaintiff's interest and that of his wife to say they have not seen such advertisements before. I prefer the evidence of PW4 — PW6 who say they have seen such advertisements to look for someone. This is because they are independent of the plaintiff. I also considered DW1's evidence that such advertisements are common in Kwong Wah and other Chinese newspapers and that of Yeoh who had seen such advertisements which was why he chose to place one as well. Hence it is reasonable to state that advertisements to locate someone are common in Chinese newspapers.

[14] The plaintiff's counsel submitted that just because such advertisements are common would not make them right. This is where the court has to consider whether the advertisement was defamatory. The plaintiff and his witnesses agreed the words conman, cheat and the other attributes which the plaintiff said were ascribed to him were not specified in the advertisement. Hence the question is whether the words in the advertisement in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the answer is in the affirmative there has been defamation. Refer to *Chok Foo Chow*.

[15] The plaintiff's counsel had submitted in para 5.6 of his written submission 2 the circumstances under which the advertisement was published has to be considered. The circumstances are that plaintiff's company's premises was burnt in October 2004 and this was reported in Kwong Wah. In the ordinary course of events this would lead to the company facing financial problems. When viewed in those circumstance the advertisement with plaintiff's photograph and the offer of a reward would give rise to the inference that the plaintiff was involved in some wrongdoing and hiding to avoid his creditors.

[16] The period between the fire and the advertisement was a good three months and in all probability would have been forgotten by the ordinary person. The plaintiff had not shown the circumstances relied upon were within the knowledge of the persons to whom the words were published. No doubt the fire was known to PW3, PW5, PW6 and PW7 but it was not put to them that because of the fire the plaintiff company was financially affected and following from there the advertisement gave rise to the inference plaintiff was a lacking honour and or integrity. Refer to *Gatley on Libel and Slander*:

> Where a person contends that the words should not be construed in their natural and ordinary meaning (as where the plaintiff pleads an innuendo based on an extrinsic fact which makes apparently innocent words defamatory …) the burden of proof lies on him. (p 81);
>
> Where extrinsic facts or circumstances are relied on as showing that the words, would not be understood in their primary meaning, such facts and circumstances must have been within the knowledge of the person to whom the words were published, for they could not have been influenced in their understanding by facts and circumstances of which they were unaware … (p 86).

[17] Further the standard to be adopted when determining whether there has been defamation is that 'of ordinary reasonable people', 'of fair average intelligence', 'but who are not avid for scandal' and should not be unduly suspicious' (*Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492, at p 504.

[18] Applying this standard I find the words in the advertisement neutral and mean exactly what is stated there which is to locate someone. I am unable to find anything in the advertisement which suggests the plaintiff to be a cheat, conman or implicated in any illegal activities such as Ah Long or that he is unfit to hold any position in society or to be a managing director of a company. The offer of reward was as stated therein to be a token of appreciation and consistent with Yeoh's evidence of what it was intended to be. It does not connote the plaintiff was hiding from his creditors such that a reward would be offered for information on his whereabouts. Although the standard format upon which DW1 drafted the contents was not produced in court it does not detract from the advertisement not being defamatory.

RECKLESSNESS AND OR NEGLIGENCE OF DEFENDANT

[19] The particulars of recklessness and or negligence are set out in para 3C of statement of claim. They relate to failure to verify the truth of the contents, confirm if there was any written authority from the plaintiff, verify if there was a missing person report, confirm and verify if there was any blood relationship between the plaintiff and Yeoh, foresee that conduct of the defendant would

cause mental and emotional agony to the plaintiff resulting in depression, find out last known address of the plaintiff and whether there was any order of court for intended service of document.

[20] DW1 received instructions from Yeoh who wanted to locate the plaintiff. DW1 did not know the actual reasons why Yeoh wanted to contact the plaintiff and it was not necessary for him to probe further. His duty and responsibility is to ensure the wording in the advertisement is proper. This was like a social service provided to the public. In cross-examination by the plaintiff counsel DW1 said he did not ask Yeoh why he wanted to place the advertisement. He agreed he didn't care for the reason as long as he was paid but disagreed he was negligent in accepting the advertisement to be published. He said the reason for the advertisement was to look for the person. The identity card number was required as it was company policy and disagreed other than suggesting the person was in hiding and wanted for arrest an identity card number was not necessary. He also disagreed if a friend or relative was looking for someone a photograph was not necessary. In publishing the advertisement he followed the company standard practice. It did not cross his mind the advertisement was to pressure the plaintiff to pay his debt Yeoh told him the person was a customer. He ensured the contents were true by making sure the wording did not affect the person concerned. Advertisements generate income for the company and quick action was required. In cross-examination by Yeoh's counsel DW1 said Yeoh was used to the information required for advertisements. After obtaining the information and until the date of publication he did not contact Yeoh. Yeoh informed him the plaintiff was a customer who owed him and could not be contacted. He wrote the advertisement following a format. He ensured the contents would not create any problems.

[21] In re-examination DW1 said the draft advertisement was seen and approved by Yeoh. He explained it was company policy not to accept advertisement from Ah Long or insert words on money lending or which suggested a person owed money. It was acceptable to publish on looking for a friend or relative. Yeoh gave the information and no address was given. RM3,000 was received for the advertisement.

[22] Yeoh gave evidence his company Koay Services has filed a claim for RM194,000 against the plaintiff's company in the Sessions Court at Sungai Petani. The plaintiff had promised to assign his condominium to set off the debt but did not do so. He then asked his project manager Lee Kah Lok (DW3, Lee) to call the plaintiff. Lee called many times but did not get any response. Lee visited plaintiff's factory but it was burnt down. Yeoh then contacted the defendant to publish an advertisement. He had previously placed obituaries and advertisements for vacant positions in *Kwong Wah*. He told DW1 the

plaintiff owed him money and refused to pick up or answer phone calls. Being unable to contact the plaintiff he wished to publish an advertisement to locate him. This was because he had seen such advertisements published to locate people. DW1 asked for the plaintiff's photo, identity card number and address and his (Yeoh) contact number. The wording in the advertisement was by the defendant and he only provided the information DW1 asked for. The photo was cut from a newspaper article which reported the fire at the plaintiff company premises.

[23] In cross-examination by the plaintiff's counsel Yeoh agreed since the amount claimed was being disputed it cannot be said the plaintiff owed him. He disagreed that was why the plaintiff didn't agree to assign the condominium. He didn't get his money back after the advertisement. He did not think such advertisements will help him get his money back. When put the advertisement did not serve any purpose he agreed. He disagreed the advertisement would damage the plaintiff's reputation. He agreed the proper thing to do is to file an action in court which he did in 2010. He didn't file any action in 2005 as he didn't have sufficient documents then. He disagreed the purpose of the advertisement was to embarrass the plaintiff or to pressure him. In-cross examination by the defendant's counsel Yeoh said he had exhausted all avenues to locate the plaintiff before contacting DW1. Purpose of advertisement was to locate the plaintiff. After the advertisement was published he received phone calls but after he said hello the calls were disconnected. In re-examination he said he wanted to locate the plaintiff as he owed him money. He received two phone calls after the advertisement.

[24] Lee's witness statement is marked as D19. He said the plaintiff's company owed Yeoh's company RM194,000 and he had made 30 phone calls to the plaintiff from March 2004–October 2005. The plaintiff had promised to assign his condominium but didn't do so. He then called the plaintiff who promised to pay RM5,000 but didn't do so after a few payments. In cross-examination by the plaintiff's counsel as to why he was still calling when the advertisement had been published he said it was to claim the debt and for him to pay the RM5,000. As to whether the plaintiff was reachable on the phone he said he called his handphone and couldn't get him and when he called the office a worker answered. In cross-examination by the defendant's counsel he said he only spoke to the plaintiff before the advertisement. When asked why the advertisement was placed if he could contact the plaintiff he replied he only contacted the office and not the plaintiff. In re-examination he said the calls were made before the advertisement and the plaintiff was not reachable before the advertisement and that was the reason for the advertisement.

[25] From the evidence DW1 drafted the contents of the advertisement based on Yeoh's instructions which was to locate someone. As far as the contents of the advertisement are concerned they are true in that Yeoh wanted to locate the plaintiff. In relation to a missing person's report, written authority from the plaintiff and if there was any blood relationship DW1 was told the plaintiff was a customer who owed money. This being a social service provided by *Kwong Wah* and common in the Chinese press to place advertisements to locate a person it was sufficient for DW1 to ensure the contents were true by making sure the wording did not affect the person concerned. The evidence of the defendant being paid RM3,000 without more does not make it negligence. As far as Yeoh is concerned the plaintiff owed him money although the civil suit in session's court is pending. Calls to the plaintiff's office were answered by a worker. The evidence of the plaintiff and PW7 is that after the fire their business continued next door. However the plaintiff and his wife were spending a lot of time in Kuala Lumpur. The plaintiff had bought a house there which was being renovated. It is probable Yeoh through his project manager Lee was unable to contact the plaintiff and hence the need for the advertisement.

[26] On the failure to foresee publication of the advertisement would cause mental and emotional agony to the plaintiff resulting in depression, the plaintiff's mental condition was premised on the evidence of PW2 (Dr Ting Joe Hang, consultant psychiatrist). His witness statement is marked as P8. It is his evidence the plaintiff is his patient and has been treated for anxiety disorder since 8 February 2005. The diagnosis was made by a Dr Lim Chee Min (Dr Lim) and he agrees with that diagnosis as found in bundle D, tab 4 (p 7). He said it was highly possible the anxiety disorder to be caused by the publication of the advertisement. He concurred with the recommendation of Dr Lim that the plaintiff stayed in Kuala Lumpur to manage his anxiety disorder as staying in Sungai Petani would aggravate his condition. The plaintiff has to visit him 6–9 times per year. His psychiatrist report is in bundle D, tab 5 (p 8).

[27] In cross-examination by the defendant's counsel PW2 said the plaintiff first saw Dr Lim on 8 February 2005. PW2 said there is always a trigger point for the condition and it has nothing to do with personality. PW2 is not aware of the fire and it could be a cause of the anxiety. The time line has to be considered. He only knew of the fire on the day of trial. He is not changing his diagnosis. If a patient deliberately lies he wouldn't know and he relies on what is told to him. His first session with the plaintiff was one hour and subsequent sessions at least 15 minutes..When the plaintiff first saw him his scoring was 26 which is below moderate in terms of anxiety. A score of 16 and above is termed as disorder. Anxiety scale is based on a questionnaire such as 'have you been anxious'. His condition is under control now. In cross-examination by third party counsel PW2 said he first saw the plaintiff five years after the

advertisement and it is possible from the time of Dr Lim and when the plaintiff saw him there could be intervening factors which caused the anxiety disorder. It is possible a person running a business and suffers RM1m loss to have anxiety disorder. He agreed that paras 1–2 of his psychiatrist report was not based on personal knowledge. On para 4 which states 'he presented with constant anxiety symptoms again' this was based on notes and he did not know his actual symptoms. With regard to him being in consensus with Dr Lim's diagnosis he agreed it is possible to maintain the same story to two doctors if he is lying. As to the plaintiff being belittled and humiliated by the advertisement (Q&A 15) he wouldn't know that and this was what the plaintiff told him. On shortness of breath being a symptom of anxiety disorder as per his answer in Q&A 16 he said it could also be due to asthma.

[28] From the evidence the plaintiff's anxiety disorder could have been caused by the fire of October 2005. PW2 testified it was possible and probable for the fire to have caused the anxiety disorder although he did say he was not changing his diagnosis. PW2 also said it is possible for someone who had incurred a RM1m loss to suffer from anxiety disorder. As reported in *Kwong Wah* on 8 October 2005 (bundle D, tab 3) the plaintiff had suffered losses of RM800.00.00. The plaintiff had given evidence he had claimed RM285,000. Thus the strain of losses from the fire could have led to the anxiety disorder. It is significant the plaintiff did not tell his doctor of the fire which PW2 only knew on the day of trial. PW2 first saw the plaintiff five years after the advertisement and he agreed there could be intervening factors from when the plaintiff first saw Dr Lim and him. Much of his report was based on what Dr Lim had noted and what the plaintiff told him. Dr Lim was not called to give evidence and his diagnosis which PW2 agreed with cannot be accepted. The scale of the anxiety disorder was based on questions asked to the plaintiff. PW2 relied on what was told to him and he wouldn't know if the plaintiff lied to him. The first three paragraphs in his psychiatrist report relate to when the plaintiff was under the treatment of Dr Lim. In para 4 the statement 'he presented with constant anxiety symptoms again' was acknowledged to be based on notes and PW2 did not know the actual symptoms. Para 6 deals more with what the plaintiff told him about the anxiety symptoms always coming back when he thinks of the libelous statements. Under the circumstances I cannot rely on the psychiatrist report prepared by PW2 as indicating the plaintiff had anxiety

disorder brought about by the advertisement.

CONCLUSION

[29] For the above reasons the plaintiff's claim against the defendant is dismissed and it follows the claim against third party is also dismissed. Costs to the defendant and third party.

Claim against defendant and third party dismissed with costs.

Reported by Ashok Kumar